

DECISION



12920 PLII
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-195610

DATE: February 21, 1980

MATTER OF: Belmont Engineering, Inc.

DIGEST:

[Protest concerning award of subcontract] is dismissed because record does not establish Government actively participated in subcontractor selection and subcontract award was not made "for" the Government since prime contractor held neither management contract nor operated GOCO plant for Government.

Belmont Engineering, Inc. (Belmont), protests the award of a subcontract to Plas-Tal Manufacturing Co., Inc. for module optical boxes under invitation for bids (IFB) 73U-47691, issued by the Rockwell International Corporation's Rocketdyne Division (Rockwell). Rockwell has a research and development contract with the Air Force. Belmont contends that Rockwell improperly rejected its low bid because its fabricating shop employed non-union labor.

Generally, we do not review protests concerning the awards of subcontracts by Government prime contractors, unless they come within certain clearly delineated circumstances. Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD 166. These include those situations where the Government so actively participates in the subcontractor selection process as to effectively cause or control the selection, and where the subcontract award is "for" an agency of the Federal Government.

Belmont asserts that the Air Force effectively controlled the selection of the subcontractor because the Air Force reserved the right to audit the subcontractor's bid "before a subcontract could be made."

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Belmont, citing our decision in Midwest Tele Communications Corporation, B-184323, February 9, 1976, 76-1 CPD 81, also maintains that the subcontract award is "for" the Government because the Government will acquire title to the optical boxes which the subcontractor furnishes to Rockwell. Finally, Belmont argues that the controlling fact is that "the prime contractor [Rockwell] is acquiring * * * equipment which [is] used by it in performing a function that the Government would otherwise be performing itself."

In Midwest, supra, as well as 49 Comp. Gen. 668 (1970), cited as authority in Midwest, the subcontract award was made by a prime contractor managing a Government-owned, contractor-operated (GOCO) plant. These type contractors, along with the Department of Energy (DOE) prime management contractors who operate and manage DOE facilities, are contractors who can make awards "for" the Government as that term is used in Optimum Systems, Inc., supra. Motorola, Inc., B-194494, August 15, 1979, 79-2 CPD 124. As the Motorola case demonstrates, however, even though title to the item purchased may vest in the Government, this fact alone does not make a subcontract award "for" the Government. Rather, under Optimum Systems, supra, there must also be a contractual relationship between the Government and prime contractor such as where the contractor is managing and operating Government facilities or where the contractor is construction manager under a cost-type contract. See Bayou State Security Services, Inc., B-195675, February 6, 1980, 80-1 CPD _____. Here, Rockwell clearly does not fall into any of these categories; it is merely a research contractor, and the optical boxes will be installed and used not in a Government-owned facility, but in Rockwell's own facility. Consequently, we do not believe Rockwell was acting "for" the Government in awarding the sub-contract.

Moreover, the Air Force reports that the Government had no contact with Rockwell concerning its selection of a subcontractor until the procurement package was submitted to the Government for approval under Defense Acquisition Regulation (DAR) § 23-202 (1976 ed.). Although

the Government approved the award to Plas-Tal, it played no part in solicitation preparation or issuance, in evaluation of bids, or in the selection of the subcontractor. We have consistently held that the mere approval of a proposed subcontract does not constitute sufficient Government involvement so as to invoke our jurisdiction. Pen Foam Insulation Co., B-192764, September 26, 1978, 78-2 CPD 233.

The protest is dismissed.

Harry R. Van Cleave
for Milton J. Socolar
General Counsel